



Agenda Date: 10/12/01

Agenda Item: 4H

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN)
ORDER AUTHORIZING EVEREST)
BROADBAND NETWORKS, INC. TO PROVIDE)
LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES)
THROUGHOUT NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE00110908

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated November 20, 2000, Everest Broadband Networks of New Jersey, Inc. (Petitioner or Everest) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange services throughout the State of New Jersey. Petitioner requested confidential treatment of the financial information in Exhibit C of its petition. On June 26, 2001, Petitioner amended the request to also include interexchange services. Everest responded to a Staff questionnaire by letter dated June 6, 2001 and to Staff interrogatories by letters dated June 26, 2001, July 10, 2001, August 6, 2001 and August 22, 2001.

According to the petition, Petitioner was incorporated under the laws of the State of Delaware on April 28, 2000. Petitioner's principal offices are located at One Executive Drive, Fort Lee, New Jersey 07024. Petition at 2.

Petitioner submitted copies of its Articles of Incorporation, Delaware Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 3, Exhibit A. According to the petition, as amended, Everest was formed to provide local exchange and interexchange services. Petition at 1, June 26, 2001 letter. Petitioner advised that it is currently authorized to provide facilities-based and resold local exchange and interexchange services in California, Illinois, Kentucky, Maryland, New York, Tennessee, Texas and Virginia. Everest advised that it has not been denied authority to provide telecommunications services in any state. In addition, Everest indicated that it has no pending civil, criminal or administrative actions against it. Everest advised that it has not negotiated any interconnection agreements.

In its amended petition, Petitioner advised that it seeks authority to offer local exchange and interexchange telecommunications services to business and residential customers

throughout New Jersey. Id. at 5. Petitioner plans to offer services that will include, but not be limited to, local exchange service, vertical services, direct inward and outward dialed trunks, centrex-like service, ancillary services and interexchange services. Everest intends to combine resale, lease of local loops and/or UNEs purchased from Verizon and to augment its offerings with some facilities-based services. Id. at 5, 7; June 6, 2001 letter.

Petitioner requested a waiver of N.J.A.C. 14:1-4.3, which requires that its books and records be maintained in accordance with the Uniform System of Accounts (USOA). Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Id. at 8.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 8. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. Ibid.

With regard to its technical and managerial qualifications, Everest stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Id. at 5. Petitioner submitted the professional biographies of its key personnel who, according to Everest, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Id. at 5, Exhibit B.

Petitioner has submitted, as evidence of its financial qualifications, audited 1999 financial statements for its parent, Everest Broadband Networks, Inc.

The Division of the Ratepayer Advocate, by letter dated January 19, 2001, recommended approval of this petition.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to

provide diversity in the supply of telecommunications services, and its findings that competition will “promote efficiency, reduce regulatory delay and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.” N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Everest’s petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements, for the first two years of its New Jersey operations pursuant to N.J.A.C. 14:1-5.11(a)5. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner’s request for a waiver of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA. Therefore, the Board APPROVES Petitioner’s request for the exemption from maintaining its books and records under the USOA.

Regarding the Petitioner's request for confidential treatment of the financial information submitted in Exhibit C, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial information be kept under seal.

DATED: 10/15/10

BOARD OF PUBLIC UTILITIES
BY:

(signed)
CONNIE O. HUGHES
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY